

identified use of the property is consistent with the concern's business activities. SASPs may not release property to a Participant without this verification.

(4) The SASP and the Participant must agree on and record the fair market value of the surplus property at the time of the transfer to the Participant. The SASP must provide to SBA a written record, including the agreed upon fair market value, of each transaction to a Participant when any property has been transferred.

(e) *Costs.* Participants acquiring surplus property from a SASP must pay a service fee to the SASP which is equal to the SASP's direct costs of locating, inspecting, and transporting the surplus property. If a Participant elects to incur the responsibility and the expense for transporting the acquired property, the concern may do so and no transportation costs will be charged by the SASP. In addition, the SASP may charge a reasonable fee to cover its costs of administering the program. In no instance will any SASP charge a Participant more for any service than their established fees charged to other transferees.

(f) *Title.* The title to surplus property acquired from a SASP will pass to the Participant when the Participant executes the applicable SASP distribution documents and takes possession of the property.

(g) *Compliance.* (1) SBA will periodically review whether Participants that have received surplus property have used and maintained the property as agreed. This review may include site visits to visually inspect the property to ensure that it is being used in a manner consistent with the terms of its transfer.

(2) Participants must provide SBA with access to all relevant records upon request.

(3) Where SBA receives credible information that transferred surplus property may have been disposed of or otherwise used in a manner that is not consistent with the terms of the transfer, SBA may investigate such claim to determine its validity.

(4) SBA may take any action to correct any noncompliance involving the use of transferred property still in pos-

session of the Participant or to enforce any terms, conditions, reservations, or restrictions imposed on the property by the distribution document. Actions to enforce compliance, or which may be taken as a result of noncompliance, include the following:

(i) Requiring that the property be placed in proper use within a specified time;

(ii) Requiring that the property be transferred to another Participant having a need and use for the property, returned to the SASP serving the area where the property is located for distribution to another eligible transferee or to another SASP, or transferred through GSA to another Federal agency;

(iii) Recovery of the fair rental value of the property from the date of its receipt by the Participant; and

(iv) Initiation of proceedings to terminate the Participant from the 8(a) BD program.

(5) Where SBA finds that a recipient has sold or otherwise disposed of the acquired surplus property in violation of the agreement covering sale and disposal, the Participant is liable for the agreed upon fair market value of the property at the time of the transfer, or the sale price, whichever is greater. However, a Participant need not repay any amount where it can demonstrate to SBA's satisfaction that the property is no longer useful for the purpose for which it was transferred and receives SBA's prior written consent to transfer the property. For example, if a piece of equipment breaks down beyond repair, it may be disposed of without being subject to the repayment provision, so long as the concern receives SBA's prior consent.

(6) Any funds received by SBA in enforcement of this section will be remitted promptly to the Treasury of the United States as miscellaneous receipts.

CONTRACTUAL ASSISTANCE

§ 124.501 What general provisions apply to the award of 8(a) contracts?

(a) Pursuant to section 8(a) of the Small Business Act, SBA is authorized to enter into all types of contracts with other Federal agencies, including

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contracts to furnish equipment, supplies, services, leased real property, or materials to them or to perform construction work for them, and to contract the performance of these contracts to qualified Participants. Where practicable, simplified acquisition procedures should be used for 8(a) contracts at or below the simplified acquisition threshold. Where appropriate, SBA will delegate the contract execution function to procuring activities. In order to receive and retain a delegation of SBA's contract execution and review functions, a procuring activity must report all 8(a) contract awards, modifications, and options to SBA.

(b) 8(a) contracts may either be sole source awards or awards won through competition with other Participants.

(c) Admission into the 8(a) BD program does not guarantee that a Participant will receive 8(a) contracts.

(d) A requirement for possible award may be identified by SBA, a particular Participant or the procuring activity itself. SBA will submit the capability statements provided to SBA annually under §124.403 to appropriate procuring activities for the purpose of matching requirements with Participants.

(e) Participants should market their capabilities to appropriate procuring activities to increase their prospects of receiving sole source 8(a) contracts.

(f) An 8(a) participant that identifies a requirement that appears suitable for award through the 8(a) BD program may request SBA to contact the procuring activity to request that the requirement be offered to the 8(a) BD program.

(g) A concern must be a current Participant in the 8(a) BD program at the time of award, except as provided in §124.507(d).

(h) A Participant must certify that it qualifies as a small business under the size standard corresponding to the NAICS code assigned to each 8(a) contract. 8(a) BD program personnel will verify size prior to award of an 8(a) contract. If the Participant is not verified as small, it may request a formal size determination from the appropriate General Contracting Area Office under part 121 of this title.

(i) Any person or entity that misrepresents its status as a "small busi-

ness concern owned and controlled by socially and economically disadvantaged individuals" in order to obtain any 8(a) contracting opportunity will be subject to possible criminal, civil and administrative penalties, including those imposed by section 16(d) of the Small Business Act, 15 U.S.C. 645(d).

[63 FR 35739, June 30, 1998, as amended at 76 FR 8259, Feb. 11, 2011]

§ 124.502 How does an agency offer a procurement to SBA for award through the 8(a) BD program?

(a) A procuring activity contracting officer indicates his or her formal intent to award a procurement requirement as an 8(a) contract by submitting a written offering letter to SBA. The procuring activity may transmit the offering letter to SBA by electronic mail, if available, or by facsimile transmission, as well as by mail or commercial delivery service.

(b) Contracting officers must submit offering letters to the following locations:

(1) For competitive 8(a) requirements and those sole source requirements for which no specific Participant is nominated (i.e., open requirements) other than construction requirements, to the SBA district office serving the geographical area in which the procuring activity is located;

(2) For competitive and open construction requirements, to the SBA district office serving the geographical area in which the work is to be performed or, in the case of such contracts to be performed overseas, to the Office of 8(a) BD located in SBA Headquarters;

(3) For sole source requirements offered on behalf of a specific Participant, to the SBA district office servicing that concern.

(c) An offering letter must contain the following information:

(1) A description of the work to be performed;

(2) The estimated period of performance;

(3) The NAICS code that applies to the principal nature of the acquisition;

(4) The anticipated dollar value of the requirement, including options, if any;